

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/527,827 Confirmation No. 4369
Applicant: Cervin et al.
Filed: December 14, 2005
Art Unit: 1636
Examiner: Hibbert, Catherine S.
Docket No.: GC779-2-US
Customer No.:

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Madame:

This communication is in response to the Restriction Requirement mailed November 19, 2007 in the above-identified patent application where the Examiner has required restriction among the following groups:

Group 1, Claim(s) 1-10, 12-22, 38-40 and 42, drawn a method of enhancing the production of a desired product in a bacterial host cell comprising a) modifying a bacterial host cell by inactivating an endogenous *arcA* gene and b) culturing the modified cell in media comprising glucose under aerobic conditions;

Group 2, Claim(s) 11, 23-32 and 41, drawn to a bacterial host cell containing an inactivated endogenous *arcA* gene;

Group 3, Claim(s) 33-37, drawn to a bacterial host cell containing an inactivated endogenous *rpoS* gene.

Applicants hereby elect, with traverse, the invention in Group 3, Claims 33-37, drawn to a bacterial host cell containing an inactivated endogenous *rpoS* gene.

Applicants traverse this restriction requirement and believe that a search and examination of the entire application (or Groups 1 and 2) can be made without serious burden to the Examiner, see MPEP sections 803 and 808.

The basis for traverse is that there would not be a serious burden on the examiner if restriction between Groups 1 and 2. Group 1 relates to a method of enhancing the production of a desired product in a bacterial host cell by inactivating an

endogenous arcA gene and culturing in media containing glucose under aerobic conditions, while Group 2 relates to bacterial host cell containing an inactivated arcA gene. These two groups are related as product and process claims, as stated in the Communication dated November 19, 2007, page 7. The reference identified and cited by the Examiner does not teach an E.coli host cell with an inactivated endogenous arcA gene, it merely discloses a mutant that is "defective in regulating its catabolic activity" (See page 3222).

Rejoining process claims under *In re Ochiai*

Applicants thank the Examiner for noting that after the elected product claims have been found allowable, all withdrawn process (method) claims which depend from or otherwise include all of the limitations of the allowed product claims should be rejoined. MPEP §821.04; page 800-63, 8th Edition, August 2001; *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995); *In re Brouwer*, 37 USPQ2d 1663 (Fed Cir 1995); 1184 OG 86, 3/26/96.

Applicants note that Groups encompassing withdrawn process (method) claims which depend from or otherwise include all of the limitations of the allowed product claims include:

Applicants reserve the right to file subsequent applications claiming the non-elected subject matter and do not waive any of their rights or abandon any non-elected subject matter. Applicants have fully and completely responded to the Office Action and have made the required election. This application is now in order for early action.

Respectfully submitted,

Date: December 18, 2007

/Patricia Robinson/
Patricia A. Robinson
Registration No. 53,525

Danisco US Inc., Genencor Division
925 Page Mill Road
Palo Alto, CA 94304-1013
Tel: 650-846-7639
Fax: 650-845-6504